

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EDIN ADGUSTO CHACON,

No. C 05-4880 SI (pr)

Plaintiff,

**SCHEDULING ORDER**

v.

D. GALLIAN, sergeant; et al.,

Defendants.  

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On May 7, 2008, the court issued an order that, among other things, set this case for a case management conference on June 19, a pretrial conference on September 8, and a bench trial on September 9, 2008. The court also ordered the case referred to the Pro Se Prisoner Mediation Program for mediation proceedings before trial.

Defense counsel then sent the court a letter requesting a rescheduling of the case management conference because of a conflict with her preplanned vacation and requesting permission for defendants to file a motion for summary judgment. The request for rescheduling of the case management conference easily can and will be accommodated. The request for permission to file a motion for summary judgment is a bit more difficult. The court already has twice set deadlines for dispositive motions; defendants avoided the first one by stating they did not believe the case was amenable to such a motion at the time (in 2006) and defendants simply ignored the second deadline. See, e.g., Defendants' Notice filed October 4, 2006; Sept. 21, 2007 Order (setting new deadline of November 9, 2007 for defendants to file motion for summary judgment). Also, defense counsel used some rather stale information to justify the desire to file a summary judgment motion at this late date. She wrote that plaintiff's medical records were difficult to obtain due to his movement between institutions and in-and-out of custody and that

"plaintiff has failed to serve the primary defendant (D. Gallian) in this matter." May 7, 2008 letter. However, she reported to the court about 18 months ago that the medical records had been obtained, see Dec. 1 2006 case management statement, and defendant Gallian was dismissed more than two years ago, see Mar. 2, 2006 Order of Service, p. 6:21 (other than six named defendants, "[a]ll other defendants are dismissed"). Nonetheless, it is not in the interests of justice to hold a trial for a case that might be able to be resolved by summary judgment motion. Therefore, the court will once again set a schedule for dispositive motions but will not vacate the pretrial or trial dates. This course of action will allow for a trial in September as scheduled if the motion for summary judgment is not filed or not granted. The court also will withdraw the referral to the Pro Se Prisoner Mediation Program to allow time for the parties to brief and the court to consider the summary judgment motion. Accordingly,

1. The case management conference set for June 19, 2008 is VACATED.


2. Defendants may file a motion for summary judgment, provided that it is filed and served no later than **May 30, 2008**. Plaintiff must file and serve his opposition no later than **July 3, 2008**. Defendants must file and serve their reply brief, if any, no later than **July 18, 2008**. The parties are notified that the court will be extremely reluctant to extend these deadlines because the court needs time to decide the motion before the trial date.

3. The referral of this case to the Pro Se Prisoner Mediation Program is WITHDRAWN. The clerk shall send a copy of this order to Magistrate Judge Vadas in Eureka.

4. The pretrial conference and trial dates remain on schedule. The pretrial conference will be held at **10:00 a.m. on Monday, September 8, 2008**. The bench trial will commence at **8:30 a.m. on Tuesday, September 9, 2008**.

IT IS SO ORDERED.

Dated: May 15, 2008

  
SUSAN ILLSTON  
United States District Judge